

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA
Lincoln Division

In Re:

**William Harold Jason Stoner aka
William Harold Stoner aka
William Jason Stoner aka
William H.J. Stoner and
Nicole Patricia Stoner fka
Nicole Patricia Swenson ,**

Case No. **08-42774**

Chapter **7**

**MOTION FOR RELIEF FROM
THE AUTOMATIC STAY**

Debtors.

Wells Fargo Bank, N.A. ,
its successors and assigns,

Movant,

v.

Kozeny & McCubbin
12400 Olive Blvd., Suite 555
St. Louis, MO 63141
(314) 991-0255
nebk@km-law.com

**William Harold Jason Stoner aka
William Harold Stoner aka
William Jason Stoner aka
William H.J. Stoner and
Nicole Patricia Stoner fka
Nicole Patricia Swenson , Debtors,**

and

Rick D. Lange , Trustee

Respondents.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW **Wells Fargo Bank, N.A. ,** and its Successors and Assigns,
"Movant" herein, and pursuant to Bankruptcy Rules 4001 and 9014, states and
alleges as follows:

1. **William Harold Jason Stoner aka William Harold Stoner aka**



William Jason Stoner aka William H.J. Stoner and Nicole Patricia Stoner fka Nicole Patricia Swenson ("Debtors") filed their Chapter 7 Bankruptcy petition on November 21, 2008 and it is currently pending before this Court.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1334, 28 U.S.C. Section 157, 11 U.S.C. Section 361 and 11 U.S.C. Section 362.

3. On May 14, 1999, a negotiable promissory note ("Note") was executed in favor of First Mortgage Company, L.L.C , in the principal amount of \$93,450.00 plus interest to accrue thereon at the rate of 6.150% per annum. A copy of said Note is marked Exhibit 1 and is attached hereto and incorporated herein by reference.

4. The Note is secured by a Deed of Trust ("Deed") on certain real property and improvements located at 2557 NW 55th St. , Lincoln , NE 68524 . A copy of said Deed of Trust is marked Exhibit 2 and is attached hereto and incorporated herein by reference. The Deed was recorded on May 19, 1999 as Document 99028119 . The subject real estate is legally described as follows:

**LOT 10, BLOCK 1, OLYMPIC HEIGHTS FIRST ADDITION,
LINCOLN, LANCASTER COUNTY, NEBRASKA.**

(hereafter, the "Property").

5. The Debtors have defaulted on the Note in that 2 contractual payments have been missed for the months of December 2008 through and including January 2009, have been missed. The total contractual arrearage due



as of January 22, 2009 is \$1,724.46 and itemized below:

2 Payments @ \$829.07	\$	1,658.14
Accrued Late Charges	\$	99.48
Suspense	\$	(33.16)
Total	\$	1,724.46

Movant requests reasonable Attorneys Fees and Costs.

6. The balance owed on the Note is approximately \$81,017.11.
7. The fair market value of the Property, according to the Lancaster County Assessor, is estimated at approximately \$107,000.00.
8. In addition to Movant, the following entities may claim an interest in the Property:
 - Homecomings Financial.
9. Pursuant to 11 U.S.C. § 362(d)(1) and (2), on request of a party in interest and after notice and hearing, the Court shall grant relief from the automatic stay, for cause, including non-payment or lack of adequate protection of an interest in property of a party in interest and/or if (a) the Debtors do not have equity in such property, and (b) such property is not necessary for an effective reorganization.
10. Movant asserts that Debtors enjoy no equity in said real property and such property.
11. Movant asserts that Debtors' failure to make regular payments as required under the Note and Deed of Trust and lack of equity in the property result in a lack of adequate protection of Movant's security interest and,



therefore, a continuation of the automatic stay imposed under Section 362 places Movant's collateral in jeopardy. As such, grounds exist for granting relief from automatic stay, effective immediately upon entry of the order.

12. The Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. The Movant may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

WHEREFORE, **Wells Fargo Bank, N.A.** respectfully prays this Court as follows:

Enter an Order granting relief from the automatic stay and authorizing it to exercise its rights under the Note and Mortgage and applicable non-bankruptcy laws; authorizing Movant to pursue its state court remedies for possession of the subject real estate; authorizing it to at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement; authorizing it to contact the Debtor via telephone or written correspondence to offer such an agreement, which shall be non-recourse unless included in a reaffirmation agreement; and for such other orders as the Court deems appropriate.



Respectfully submitted,

/s/ William T. Holmes II

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The undersigned certifies that a copy of the above and foregoing pleading was filed electronically and/or mailed by U.S. First Class Mail on January 22, 2009 , to:

William Stoner and
Nicole Stoner
Debtors
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/s/ Erica Davner
Erica Davner

